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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CRISTIAN JIVIRAN ZAMORA,

Defendant and Appellant.

F071953

(Super. Ct. Nos. 1455380 &
1469787)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Stanislaus County. Shawn D. Bessey, Judge.

Elaine Forrester, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California for Plaintiff and Respondent.

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Cristian Jiviran Zamora entered into a plea agreement to resolve two cases pending before the trial court. He was sentenced pursuant to the provisions of the plea

* Before Kane, Acting P.J., Poochigian, J. and Peña, J.

agreement. His appellate counsel failed to identify any arguable issues in the case. After a thorough review of the record, we agree with appellate counsel that there are no arguable issues and affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

Case No. 1455380

The complaint was filed on March 1, 2013. The information charged Zamora with residential burglary (Pen. Code, § 459),¹ and participation in a criminal street gang (§ 186.22, subd. (a)). The enhancement to the first count alleged the crime was committed for the benefit of a criminal street gang pursuant to the provisions of section 186.22, subdivision (b)(1)(a).

On the date in question, officers responding to a possible burglary caught Zamora and a coperpetrator exiting the victim's house through a window. Officers found jewelry from inside the house in Zamora's pocket. The victim confirmed neither perpetrator had permission to be in the house or to take anything out of the house. Zamora admitted to burglarizing the house after he and the coperpetrator saw the victim drive away.

Case No. 1469787

The first amended complaint was filed in this case on January 3, 2014. The information charged Zamora with willful infliction of corporal injury on the parent of the defendant's child, commonly referred to as spousal abuse. (§ 273.5, subds. (a) and (b)(4).) The enhancement alleged the crime was committed while Zamora was on bail in case number 1455380.

At the preliminary hearing, the victim admitted she was the mother of Zamora's child. On the day in question she was at Zamora's apartment when she and Zamora had an argument. When the victim turned to leave the apartment she tripped over some cords and hit her head on a piece of furniture. She was taken to the hospital where she was

¹ All statutory references are to the Penal Code.

interviewed by the police. In that recorded interview, she told the officer that Zamora had “head-butted” her causing the injury. She also said Zamora choked her. The victim claimed she lied in the interview because she was upset with Zamora.

The Plea Agreement

On May 19, 2015, Zamora entered into a plea agreement to resolve both cases. He agreed to plead no contest to both charges in case number 1455380, and to the spousal abuse charge in case number 1469787. The enhancements in both cases were dismissed. The prosecutor also agreed to a prison term of five years, consisting of the midterm of four years on the burglary count, plus one year for the spousal abuse count. The sentence on the gang count was to be imposed consecutively.

At the hearing the trial court confirmed Zamora’s understanding and agreement to the disposition. The trial court also informed Zamora of the consequences of his plea, including that the burglary and the street gang charge were strikes and would increase his sentence in any future prosecution. Zamora confirmed he was entering his plea freely and voluntarily, and he had adequate time to discuss the case with his attorney. The trial court also advised Zamora of his constitutional rights and secured Zamora’s waiver of those rights.

The trial court then accepted Zamora’s no contest plea, found him guilty of the charges, and sentenced him to the agreed upon term.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436, asserting that after reviewing the record she could not identify any arguable issues. By letter dated October 30, 2015, we invited Zamora to inform this court of any issues he wished us to address.

Zamora responded to our invitation. His primary assertion is that the conviction for active participation in a criminal street gang pursuant to section 186.22, subdivision (a) should be stricken because he was not a member of a criminal street gang, and there

was no evidence to suggest otherwise. We reject this request because a plea of no contest constitutes an admission to the elements of the charged offense. (*People v. French* (2008) 43 Cal.4th 36, 49.)

The second part of Zamora's letter inquires whether his burglary conviction or his spousal abuse conviction could be reduced to a misdemeanor pursuant to the provisions of Proposition 47, the Safe Neighborhoods and Schools Act. While we recognize this issue should first be brought to the trial court, we will address it to avoid a waste of judicial resources.

On November 4, 2014, the voters enacted Proposition 47, which went into effect the next day. (Cal. Const., art. II, § 10, subd. (a).) Section 1170.18, which was enacted as part of Proposition 47, is the portion of the proposition relevant to Zamora's inquiry.

In general, Proposition 47 reclassified certain crimes from felonies to misdemeanors. Section 1170.18 permits a prisoner who has been convicted of one of the specifically enumerated crimes to petition the trial court to have his conviction reduced from a felony to a misdemeanor. Neither residential burglary (§ 459) nor spousal abuse (§ 273.5, subd. (a)) are included in the list of crimes reclassified as misdemeanors. Accordingly, Zamora is not entitled to any relief pursuant to the provisions of Proposition 47.

We have thoroughly reviewed the record and agree with appellate counsel that there are no arguable issues in this case. Zamora entered into a plea agreement, and both parties complied with the terms of the agreement. Zamora informed the trial court that he entered into the plea freely and voluntarily. The trial court explained to Zamora that both the burglary charge and the street gang charge would be strikes and result in increased penalties if he committed any crime in the future pursuant to the provisions of section 667, subdivisions (b)-(i). The trial court sentenced Zamora to the term agreed to by the parties.

In Zamora's petition for a certificate of probable cause, he asserted he received ineffective assistance of counsel and was coerced into accepting the plea agreement. As our summary in the preceding paragraph establishes, there is no evidence in the record to support this assertion. He also asserted his sentence was unfair. First, we note he agreed to the sentence. We also note his maximum exposure was much greater than that which was imposed. Accordingly, Zamora benefited greatly by accepting the plea agreement.

DISPOSITION

The judgment is affirmed.